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VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Petition for Expedited Rulemaking to Establish Reporting Requirements and  
Performance and Technical Standards for Operations Support Systems,  
RM 9101**

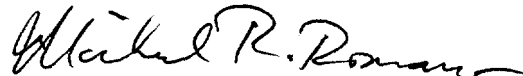
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Dear Mr. Caton:

Pursuant to the Commission's June 10, 1997 Public Notice in the above-referenced matter, enclosed for filing are an original and four (4) copies of the Comments of GST Telecom, Inc., and a diskette containing the Comments in WordPerfect for Windows 5.1 format.

Please date-stamp the enclosed extra copy of the Comments and return it to the undersigned via our messenger. If you should have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,



C. Joël Van Over  
Michael R. Romano

Counsel for GST Telecom, Inc.

Enclosures

cc: J. Jeffrey Mayhook (w/o diskette)  
Janice M. Myles, Common Carrier Bureau (2 copies and diskette)  
International Transcription Service (w/diskette)

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of:

Petition for Expedited Rulemaking  
To Establish Reporting Requirements and  
Performance and Technical Standards for  
Operations Support Systems

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RM 9101

**COMMENTS OF GST TELECOM, INC.  
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING**

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Dated: July 10, 1997.

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## SUMMARY

**Jurisdiction over Operations Support Systems ("OSS"):** Several statutory provisions give the Federal Communications Commission ("Commission") jurisdiction over the provision of access to OSS functions by incumbent local exchange carriers ("ILECs"). As the Commission has noted in previous orders, Section 251(c) of the Telecommunications Act of 1996 ("1996 Act") imposes a duty upon ILECs to provide nondiscriminatory access to OSS functions as an unbundled network element and also as a component of bundled resale services. Moreover, Sections 201 and 202 of the Communications Act of 1934, as amended by the 1996 Act ("act"), outlaw certain discriminatory practices by common carriers against end users and other carriers, and have been used by the Commission in the past to prohibit various kinds of discrimination in the long distance market. Finally, the Commission has limited jurisdiction under Section 271 of the 1996 Act to examine whether a Bell Operating Company ("BOC") is providing nondiscriminatory access to network elements in the context of a BOC's application to provide in-region interLATA services.

**Full and Complete Disclosure Of OSS Information:** Ample evidence of discrimination against CLECs has already been presented in a variety of fora. To address this discrimination and assure competitive access to OSS functions, GST urges the Commission to require mandatory disclosure by each ILEC of its internal OSS service performance standards, and OSS service measurement criteria, and periodic reporting of comparative data in a standardized format sufficient to show whether each ILEC is providing each competitive local exchange carrier ("CLEC") with the same level of OSS service that it provides to its own end user customers and affiliates. The release of this information is critical in setting appropriate nondiscriminatory standards for performance by each ILEC.

**Establishment of Performance Standards:** While it is axiomatic that ILECs must provide the same level of OSS service to all customers on a nondiscriminatory basis, GST urges the Commission to establish nondiscrimination standards for each OSS function so that all customers (whether CLEC or ILEC) will know the level of service they are entitled to expect. Nondiscrimination standards tailored to each OSS function will assure accountability at both the ILEC and CLEC levels and ultimately benefit consumers. Without Commission guidance, ILECs will have no incentive to support national standards.

**Standardization of OSS Functions:** GST urges the Commission to support standardized electronic interfaces between ILECs and CLECs nation-wide. This standardization is necessary to foster rapid development of real time access to OSS information and services and to assure that ILECs do not use idiosyncratic interfaces to raise competitors' costs. Moreover, standardization will allow the Commission to ultimately develop meaningful national performance standards that reflect the actual level of performance delivered by each ILEC.

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Petition for Expedited Rulemaking	)	RM 9101
To Establish Reporting Requirements and	)	
Performance and Technical Standards for	)	
Operations Support Systems	)	

**COMMENTS OF GST TELECOM, INC.  
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING**

GST Telecom, Inc. ("GST"), by undersigned counsel and pursuant to the Public Notice issued by the Federal Communications Commission ("Commission") on June 10, 1997, hereby submits its comments in support of the Petition for Expedited Rulemaking filed by LCI International Telecom Corp. ("LCI") and the Competitive Telecommunications Association ("Comptel") (collectively "Petitioners").<sup>1</sup>

**I. INTRODUCTION**

GST is authorized to provide interexchange telecommunications services nation-wide. GST has also negotiated interconnection agreements to provide competitive local exchange service throughout the U S West service market, as well as in certain markets served by GTE and Pacific Bell.<sup>2</sup> Moreover, GST's digital networks currently serve 19 cities in Arizona, California,

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<sup>1</sup> GST is the parent company of a number of wholly-owned operating subsidiaries offering interexchange service, local exchange service, or both. For the limited purpose of these comments, any reference to GST may include one or more of these operating subsidiaries.

<sup>2</sup> GST's interconnection agreements have been approved by State commissions in Washington, Oregon, Idaho, Arizona, New Mexico, California, Nevada and Hawaii. Agreements

Hawaii, New Mexico and Washington. In addition, GST has networks under construction which, when completed, will serve 18 additional cities and expand its regional footprint to Idaho, Oregon, Utah and five Hawaiian Islands.

While GST is dedicating substantial resources to assuring that its own internal systems and facilities function properly, its ability to provide competitive local exchange service is ultimately dependent upon the ILECs that retain control of essential bottleneck facilities and services. Among the most significant essential bottleneck services are those services that comprise the OSS functions.

Because ILECs must provide critical components of OSS services, GST and its customers will remain vulnerable to ILEC bottleneck control in the ordering and installation of new service and in the maintenance and repair of existing service for the foreseeable future. As increasing demands are placed on ILEC resources, with the increasing number of CLEC customer service orders that competition will encourage, ILECs can be expected to succumb to the tendency to serve their own customers first and best. It cannot be disputed that ILECs have every economic and institutional incentive to do so.

Unless the Commission takes quick action, by introducing regulatory incentives to assure equal access to OSS functions, competition will falter. Unless the Commission articulates nondiscriminatory standards for each OSS function, competition will ultimately fail. The reality is that most CLECs cannot afford the costs of a false start, and local customers will not tolerate OSS service that falls below the levels they have come to expect from their monopoly service

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are pending in Texas and Utah.

providers.

Local competition experience to date has taught that most ILECs are unwilling to provide the same level of service to CLECs that they have historically provided to their own customers. But this is the benchmark of the marketplace. This benchmark must therefore be the regulatory threshold for nondiscriminatory treatment for all customers.

Finally, by adopting clear regulatory nondiscrimination standards for each ILEC OSS service, the Commission will foster increased competition in the provision of customer service generally. Once ILEC OSS service expectations are established, and monitored through periodic reporting, CLECs as well as ILECs will become fairly accountable to their own customers for quality customer service. Consumers will be the ultimate beneficiaries, as they should in a truly competitive market.

## **II. THE COMMUNICATIONS ACT OF 1934, AS AMENDED BY THE 1996 ACT, GIVES THE COMMISSION JURISDICTION OVER OSS SERVICES.**

### **A. Section 251 Jurisdiction.**

In its Local Competition Order, the Commission concluded that OSS and the information contained in such systems “fall squarely within the definition of ‘network element’,” and accordingly that regulation of these items falls squarely within the Commission’s jurisdiction to enforce Section 251(c)(3) of the 1996 Act.<sup>3</sup> Similarly, the Commission found that the provision of access to OSS functions fits within the scope of Section 251(c)(4) of the 1996 Act, as a part of

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<sup>3</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499, at 15763, ¶ 516 (1996) (“Local Competition Order”).



services available for resale.<sup>4</sup> In turn, the Commission found that the OSS functionality, whether considered a network element or a component of resold services, was therefore subject to the nondiscrimination requirements contained in both of those subsections.<sup>5</sup> The Commission reaffirmed these separate conclusions in its Second Order on Reconsideration.<sup>6</sup>

**B. Sections 201 and 202 Jurisdiction.**

The Commission need not rely solely on Section 251, however, in responding to continuing discrimination in the provision of OSS functions to CLECs. Title II of the Act provides the Commission with broad jurisdiction over the practices of common carriers.<sup>7</sup> Indeed, the statute explicitly preserves the Commission's Section 201 powers as separate from the Commission's powers under Section 251: "Nothing in [Section 251] shall be construed to limit or otherwise affect the Commission's authority under Section 201."<sup>8</sup> Specifically, Section 201 of the Act mandates that "all charges, practices, classifications, and regulations for and in connection with any communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared unlawful."<sup>9</sup> Likewise, Section 202 of the Act prohibits "unjust or unreasonable discrimination in charges,

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<sup>4</sup> *Local Competition Order*, 11 FCC Rcd at 15763, ¶ 517.

<sup>5</sup> *Local Competition Order*, 11 FCC Rcd at 15763, ¶517

<sup>6</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-96, Second Order on Reconsideration, FCC 96-476, at ¶ 9 (rel. Dec. 13, 1996) ("Second Order on Reconsideration").

<sup>7</sup> 47 U.S.C. §§ 201 and 202 (1996).

<sup>8</sup> *Id.*, at § 251(i).

<sup>9</sup> *Id.*, at § 201(b).

practices, classifications, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device.”<sup>10</sup>

Commission precedent holds that under these sections of the Act, the Commission must exercise jurisdiction to prevent a common carrier’s unjust or unreasonable discrimination not only against end-user customers, but also against other common carriers.<sup>11</sup> As early as 1976, the Commission established, “It is clear . . . that the prohibitions [on resale and shared services] restrict subscribers’ use of their communications service, and the carriers must justify the restrictions as just and reasonable under Section 201(b) of the Communications Act, and the case law based thereon. Also, the restrictions and exceptions thereto are discriminatory, and thereby unlawful if it is determined that the discrimination is unjust and unreasonable under Section 202(a) of the Act.”<sup>12</sup> Indeed, it could be argued that the current failure by the ILECs to provide nondiscriminatory access to OSS functions retards successful entry into the local market in much the same way that explicit restrictions on resale slowed the development of competition in the interexchange market until 1976. Given the overwhelming number of problems that CLECs can cite in obtaining nondiscriminatory access to OSS functions,<sup>13</sup> this Commission should now exercise its authority under Sections 201 and 202 -- just as it did in opening up the long distance resale market for competitors -- to examine whether ILEC practices in providing access to their

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<sup>10</sup> *Id.*, at § 202(a).

<sup>11</sup> *See Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities*, Docket No. 20097, 60 F.C.C. 2d. 261 (1976).

<sup>12</sup> *Id.*, at 263, ¶ 4.

<sup>13</sup> *See Petition*, at 34-84.

OSSs are unjust, unreasonable, or unjustly or unreasonably discriminatory.<sup>14</sup>

**C. Section 271 Jurisdiction.**

Section 271 of the 1996 Act also confers jurisdiction upon the Commission to examine Bell operating company ("BOC") provision of access to OSS functions. Among the key components of the "competitive checklist" contained in that section are two provisions requiring the Commission to determine whether the BOC has provided nondiscriminatory access to unbundled network elements and made resale services available on reasonable and nondiscriminatory terms.<sup>15</sup> As the Department of Justice accurately noted in its Evaluation of the Southwestern Bell Communications Section 271 Application, "The checklist requirements of providing resale services and access to unbundled elements would be hollow indeed if the efficiency of -- or deficiencies in -- these 'wholesale support processes,' rather than the dictates of the marketplace, determined the number or quality of such items available to competing carriers."<sup>16</sup> Accordingly, Section 271 is only effective if the Commission can establish the parameters of discriminatory conduct with respect to the BOCs' provision of unbundled elements and resale services, including the support processes associated with the provision of these items. Thus, independent of its jurisdiction derived from Section 251 and Title II of the Act, the

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<sup>14</sup> See *Filing and Review of Open Network Architecture Plans*, 5 FCC Rcd 3103, ¶ 43 (May 8, 1990) (if BOCs offer direct access to OSS functions to their enhanced service providers (ESPs), they must offer direct access to independent ESPs).

<sup>15</sup> 47 U.S.C. § 271(c)(2)(b)(ii) and (xiv) (1996).

<sup>16</sup> *Application of SBC Communications Inc. et. al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services in the State of Oklahoma*, Evaluation of the United States Department of Justice, CC Docket No. 97-121, at 26 (filed May 16, 1997) ("DOJ Evaluation").

Commission has jurisdiction in the context of Section 271 proceedings to direct the applicant BOC to produce all information relating to its self-provisioning of OSS functions.

### **III. THERE IS AMPLE EVIDENCE OF DISCRIMINATION IN THE PROVISION OF OSS SERVICES.**

The Commission recognized in its Local Competition Order that not all ILECs had the internal systems in place to provide equal service to CLECs for both unbundled network elements (pursuant to § 251(c)(3)) and resold services (pursuant to § 251(c)(4)). The Commission therefore expressly ordered ILECs to develop the necessary internal systems “no later than January 1, 1997,” so that “new entrants will be able to compete for end user customers by obtaining nondiscriminatory access to operations system support functions,”<sup>17</sup>

The Commission declined to set national OSS access standards in the Local Competition Order, preferring to give the industry time to achieve consensus on such standards.<sup>18</sup> The Commission stated, however, that it would monitor industry progress, and:

Depending upon the progress made, we will make a determination in the near future as to whether our obligations under the 1996 Act require us to issue a separate notice of proposed rulemaking or take other action to guide industry efforts at arriving at appropriate national standards for access to operations support systems.<sup>19</sup>

Based upon evidence supplied by LCI in its Petition (comprising 50 pages of its

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<sup>17</sup> *Local Competition Order*, 11 FCC Rcd at 15767-8, ¶ 525.

<sup>18</sup> *Local Competition Order*, 11 FCC Rcd at 15768, ¶ 527.

<sup>19</sup> The Commission indicated that “ideally, each incumbent LEC would provide access to support systems through a nationally standardized gateway.” *Id.*

submission), the Department of Justice's evaluation of SBC Communications, Inc.'s Application to provide in-region interLATA services in Oklahoma,<sup>20</sup> and the recent antitrust suit filed by Electric Lightwave, Inc. against US West,<sup>21</sup> the time has come for the Commission to Act. If the Commission does not pursue an expedited rulemaking proceeding, given this environment, customers' appetites for local competition will quickly diminish and ILECs will solidify their enduring control over local exchange markets.

Even before undertaking an investigation or rulemaking proceeding, substantial evidence suggests that:

1. Certain ILECs have interpreted their OSS obligations as requiring them to treat all CLECs alike, but not to require them to provide the same level of service to CLECs that they provide to their own customers;<sup>22</sup>
2. ILECs have not developed the necessary internal systems and information essential to providing nondiscriminatory OSS functions;<sup>23</sup>
3. ILECs have refused to disclose the OSS performance criteria and service

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<sup>20</sup> *Application of SBC Communications Inc. et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in the State of Oklahoma, Evaluation of the United States Department of Justice*, CC Docket No. 97-121 (filed May 16, 1997).

<sup>21</sup> *Electric Lightwave, Inc. v. US West Communications, Inc.*, United States District Court, Western District of Washington at Seattle, Civil No. C97-1073Z (filed June 30, 1997).

<sup>22</sup> *E.g., Petition*, at 3.

<sup>23</sup> *E.g., Petition*, at 84, (GTE refused to provide customer information without written authorization).

intervals they apply to their own customers;<sup>24</sup>

4. Most ILECs have not developed adequate electronic interfaces to permit real time access to pre-order information, order entry, scheduling, maintenance and repair reporting and status information;<sup>25</sup>

5. Most ILECs have resisted the development of industry standards for uniform OSS interfaces;<sup>26</sup>

6. Most ILECs have failed to provide CLECs with OSS service that is equal to that provided to their own customers.

#### **IV. SCOPE OF PROPOSED RULEMAKING.**

##### **A. Full Disclosure by ILECs Is a Prerequisite to Reasoned Rulemaking.**

If the proposed rulemaking is to achieve its fundamental purpose — to assure efficient nondiscriminatory access to OSS information and services — the Commission must order each ILEC to disclose publicly to the Commission (1) internal performance standards for each OSS function; (2) historical performance data and measurement criteria for each OSS function; (3) historical performance data and measurement criteria for OSS functions provided to CLECs; (4) the extent to which real time access to OSS information is available to its internal operations and is being provided to CLECs; and (5) the nature and status of electronic interfaces for each

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<sup>24</sup> *E.g., DOJ Evaluation*, at 60-61; *Petition*, at 66.

<sup>25</sup> *E.g., DOJ Evaluation*, at 30; *Petition*, at 83 (US West has made less progress than any other ILEC).

<sup>26</sup> *E.g., Petition*, at 30-32.

OSS function.

This information is essential to evaluating the extent to which ILECs have observed the Commission's mandate to develop the internal systems necessary to provide nondiscriminatory access to OSS functions "no later than January 1, 1997"<sup>27</sup> and will supply the predicate for rulemaking in the OSS service area.

**B. Standardized Electronic Interface Technologies Are Critical.**

GST further concurs with the Commission expectation that ILECs should "provide access to support systems through a nationally standardized gateway."<sup>28</sup> To assure that national standards are adopted, the Commission must taken an active role in assuring that such standards are quickly put in place. Without Commission guidance, ILECs will have no incentive to support national standards. The reality is that divergent ILEC standards will raise CLEC costs substantially and discourage CLECs from entering markets where ILECs have refused to provide cost efficient access to real time OSS, including ordering information, scheduling, reporting, diagnostics, and other OSS functions on a standardized basis. It is unrealistic to expect new entrants to invest not only in extensive local infrastructure and facilities but also to interface with the diversified operating systems of numerous ILECs. As LCI noted in its Petition, "LCI, which has more resources than many companies, does not have the resources of an AT&T or MCI, so that undertaking its side of achieving OSS functionality is a substantial effort in the best of circumstances, but a daunting one if LCI must undertake a separate effort, from scratch, with

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<sup>27</sup> *Local Competition Order*, 11 FCC Rcd at 15767, ¶ 525.

<sup>28</sup> *Local Competition Order*, 11 FCC Rcd at 15768, ¶ 527.

each RBOC, GTE, and each other company in whose market LCI would like to compete for local service and access.”<sup>29</sup> LCI’s comment applies with equal force to GST’s effort to penetrate local markets. GST has invested and is continuing to invest in digital networks throughout the Western United States markets. It should not also be burdened with the costs associated with developing and testing unique interface systems at the behest of each ILEC. Nonstandard OSS interfaces make the costs of entry significantly higher for GST, and substantially delay GST’s ability to offer and provide “one-stop” telecommunications service to its customer base.

While LCI’s Petition did not expressly request that the Commission require standardization in the context of a new rulemaking, this Commission has the authority to require joint planning and standardization by private entities. As the Commission has previously stated, “Federal agencies, in the absence of specific statutory prohibitions, have authority to require concerted action on the part of private entities subject to their regulatory authority if this concerted action is necessary or appropriate to further the statutorily established goals and functions of the agencies.”<sup>30</sup> In fact, the Commission noted that it possessed such authority as early as 1980, finding that its powers under Section 201(a) of the Act included the power to compel local exchange carriers “to acquire facilities and to adopt design criteria that will make interconnection effective.”<sup>31</sup> The Commission has cited a number of additional statutory sources,

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<sup>29</sup> *Petition*, at 21.

<sup>30</sup> *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III, Notice of Proposed Rulemaking, 94 F.C.C. 2d 292, 314, at ¶ 50 (1983) (“Market Structure NPRM”).

<sup>31</sup> *MTS and WATS Market Structure*, CC Docket No. 78-72, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 F.C.C. 2d 177, 207, at ¶ 123 (1980).



including Sections 1, 4(i), 201(a), and 214 of the Act, that provide further authority to require joint planning by carriers under its jurisdiction.<sup>32</sup> In short, the Commission has found that joint planning, even if implemented in some limited fashion, can provide “an appropriate mechanism for ensuring the just and reasonable administration of interconnection arrangements.”<sup>33</sup>

Whatever approach the Commission ultimately adopts on standardization, it should support ongoing private initiatives. For example, GST strongly supports the work of the Alliance for Telecommunications Industry Solutions and the American National Standards Institute to establish standardized technical and operational criteria for OSS. Indeed, GST believes that by directing the disclosure of all information related to OSS functions by ILECs, the Commission can lend invaluable assistance to these groups and expedite the ultimate standardization of OSS. The Ordering and Billing Forum and other working industry fora can undoubtedly use the information disclosed as a result of the Commission’s order to assess which systems and interfaces are best suited to both ILECs and CLECs and achieve maximum efficiency for each particular OSS function.

Until standardization is achieved, the Commission cannot establish minimum national standards for the provision of access to OSS by ILECs. In the interim, the Commission must use the information that it will gain from ordering full disclosure by all ILECs to assess the extent and impact of ILEC discrimination against its competitors in providing access to OSS functions and to provide a benchmark for enforcement. As pointed out in these Comments, the statutory

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<sup>32</sup> See *Market Structure NPRM*, at 316, ¶ 51.

<sup>33</sup> *Id.*


standards of nondiscrimination imply that some comparison must be made between how the ILEC internally provisions OSS functions for its own customers and how it provides access to CLECs. It would be illogical to assess whether discrimination has occurred by comparing the actual service quality received by the CLEC to some standard of performance other than that which the ILEC provides itself, its affiliates, or its end users. Once standardization is achieved, however, this illogical result is eliminated because presumably all ILECs are operating under the same technical constraints in providing access to OSS functions, and therefore all ILECs can be held to comparable standards of performance. A singular level for each OSS performance standard, including intervals, and monitoring procedures is of course simpler for CLECs to measure and the Commission to administer. Accordingly, the Commission can and should assist the industry's standardization efforts by providing the industry working groups with the information it obtains as a result of mandating full disclosure from the ILECs in this proceeding.

V. **CONCLUSION**

For the foregoing reasons, GST respectfully requests that the Commission initiate a rulemaking and adopt rules consistent with the principles herein.

Respectfully submitted,

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Dated: July 10, 1997.